

**Stafford County
BOARD OF ZONING APPEALS**

MINUTES March 27, 2007

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, March 27, 2007 was called to order with the determination of a quorum at 7:00 p.m. by Chairman Cecelia Kirkman in the ABC Conference Room in the Stafford County Government Center. Ms. Kirkman introduced the Board members and staff and explained to the public present, the purpose, function and process of the Board of Zoning Appeals. She asked the members of the public who planned to speak at this meeting to please stand and raise their right hand, swearing or affirming to tell the truth.

Ms. Kirkman said the By-Laws of this Board state that the applicant is allowed up to ten minutes to state their case, the other speakers are allowed up to three minutes to testify, and the applicant is allowed up to three minutes for rebuttal.

Members Present: Cecelia Kirkman, Larry Ingalls, Julie Rutledge, Angelo Amador, Ernest Ackermann, John Overbey, and Steven Beauch

Members Absent:

Staff Present: Rachel Hudson, Acting Zoning Administrator
Melody Friberg, Senior Zoning Technician
Wanda Doherty, Recording Secretary

Declarations of Disqualification's: None

Ms. Kirkman asked staff if adjacent property owners were notified of the meeting room change.

Ms. Friberg said no, there was not time.

Ms. Kirkman wanted to know if there was a sign down stairs and did the guard know of the change.

Ms. Friberg said the guards were notified of the change and a sign was downstairs in the lobby.

Ms. Kirkman said tonight we have some students observing the meeting.

PUBLIC HEARINGS:

Ms. Friberg reviewed the following case for the Board.

Ms. Friberg said the Board was given a handout of an email from Mr. McClevey an adjacent property owner but they are not present.

SE07-2/2700067 - STAFFORD COUNTY PUBLIC SCHOOLS - Requests a Special Exception per Stafford County Code, 28-38(j), "Performance Regulations, Exceptions to Open Space Ratio", to allow a reduction of the open space requirement for construction of an additional parking lot on Assessors Parcel 22-19J. This property is zoned A-1, Agricultural, located at 101 Den Rich Road.

Ms. Kirkman said we heard an application last month for a Special Exception or Variance, I cannot remember which it was. She said then she saw they had also requested a Variance on the height and asked staff as a matter of routine to understand prior to hearing an application if there are any other Special Exceptions or Variances that the applicant is seeking through either Zoning or Planning. She asked if staff knew if there are other requests for this particular request.

Ms. Hudson said she did not.

Mr. Adams, Assistant Director of Construction for Stafford County Schools said they request a Special Exception to construct a parking lot at Widewater Elementary School. He said currently the site is used for school functions and County functions. He said not only day-to-day parking is premium but also evenings, when school and County functions are scheduled we have people parking on the grass and on the side of the road. He said the parking causes a hazard and it would be difficult for emergency vehicles to get to the school. He said no matter how they try to control the seeding of the vacant lot with people parking there, it is difficult to maintain and control. Mr. Adams said Stormwater Management is a big part of the addition to the new parking lot and has been approved.

Mr. Ackermann asked how many parking spaces would this add.

Mr. Adams said it would add 130.

Mr. Ackermann asked how many parking spaces are there currently.

Mr. Adams said 66 plus or minus one or two.

Mr. Ackermann asked how the parking compared to the size of the school.

Mr. Adams said the school is approximately 77,000 square feet.

Ms. Rutledge said are you saying that you purchased additional land, 1.62 acres to add to the land.

Mr. Adams said the School Board owns the land.

Ms. Rutledge said that space is contained in the open space requirement.

Mr. Adams said yes.

Ms. Rutledge asked Mr. Adams if he had seen the letter from the McClevey's.

Mr. Adams said he met with Mr. McClevey and his son this morning prior to tonight's meeting. He said he has not read the email but went through everything that would be done.

Ms. Rutledge said Mr. McClevey has five concerns in the letter and you may want to take a look at them to see if they are or can be addressed. She said with a Special Exception we have to consider the surrounding parcels and she had a hard time determining the old parking lot and the new one with the information provided.

Mr. Adams showed the Board the old parking lot and proposed parking lot.

Mr. Horan, Stafford County Schools said they tried to delineate the difference on the attachment in your packet but the copier must not have picked it up.

Mr. Adams went over the information on the site plan.

Mr. Horan said what makes this school unique is that Parks and Recreation utilizes the fields and when there are school functions there are a lot of cars. He said the school is used as an election poll and even when you have open house at the school, the parking is inadequate.

Mr. Ackermann asked if the site was at 80% open space.

Ms. Friberg said when she, Mr. Adams and the engineer met the engineer informed them the school was already at 80%.

Mr. Beauch said that is what all the written material says.

Mr. Overbey said you are asking for six percent additional open space.

Mr. Ackermann asked if the school could be expanded in the future.

Mr. Horan said the school core area has maxed out and only if a total renovation was done to the school including cafeteria, library and more classrooms.

Mr. Overbey said his wife works for the Stafford County school system and he understands that elementary school buildings are kept as small as feasible.

Mr. Horan said that is correct.

Ms. Kirkman said she was sorry to interrupt but she needed to clarify something Mr. Overbey said. She said could we double check on the definition of conflict of interest Ms. Hudson.

Mr. Overbey said you can check but there is no conflict of interest.

Ms. Kirkman said she believes they just need to verify if it is a conflict of interest.

Mr. Beauch said he went to school.

Ms. Rutledge said her children go to Stafford County Public Schools and if a member does not feel there is a conflict of interest it should not be an issue.

Ms. Kirkman said as a point of order there is a legal definition of conflict of interest; it applies to not only members but also spouses of members. She said she wants to make sure the Board members voting on this do not have a conflict of interest because then it can be easily overturned in the Circuit Court.

Mr. Overbey said the only conflict of interest he could see would be a monetary gain from acting on this particular plan and he will receive no monetary gain now or ever.

Ms. Kirkman said she understands Mr. Overbey's understanding of what constitutes a conflict of interest. She said Ms. Hudson before we do this vote tonight can we get some information on that.

Ms. Hudson said she would not be able to get information on that as the County Attorney's office is closed.

Ms. Rutledge said if a Board member was an adjacent property owner that would be a conflict of interest. She said she did not perceive any conflict of interest and did not think the Chairman has the right to withhold a vote on a case because she wants a definition. She said when we were put into these positions we were given a state conflict of interest and we are given it every year.

Ms. Kirkman said with all due respect Ms. Rutledge, my responsibility, as the Chair is to make sure the proceedings of this body is carried out in accordance with the legal statutes of the State of Virginia. She said she would like clarification about the definition of conflict of interest.

Mr. Beauch said we could get that later.

Ms. Kirkman said she would like the information before the vote. She said all this will take is a member of staff going to their office, going online, and looking up the statute. She said her understanding is that if your spouse is employed by an applicant that probably constitutes a conflict of interest.

Mr. Amador said even if you get a definition right now, that is the personal decision of the member and if they do not think they have to abstain, just move on.

Ms. Kirkman said we will move on.

Mr. Beauch said he has some other issues regarding Mr. McClevey's letter. He said Mr. McClevey raises five concerns and I do not believe I could vote until comments are heard on each of them.

Mr. Horan said they could go over the issues.

Mr. Overbey asked if there was any attempt to purchase additional property so you could reach the 80% open space.

Mr. Horan said no.

Mr. Overbey said one of the options you have is to attempt to acquire additional property from the neighbors. He said if you approach the neighbors and they say no then you have no other choice. He said it gives us a better feeling if you make every attempt possible to meet this requirement without coming in for a Special Exception.

Mr. Beauch asked Mr. Horan and Mr. Adams if they have the authority to go to the neighbors and ask if they would be willing to sale some land.

Mr. Horan said they would have to go to the School Board and explain the situation to them.

Ms. Rutledge said this is a question we ask of every applicant with open space requests.

Mr. Horan said it is difficult for us to purchase land.

Mr. Overbey said it would look like an act of good faith if you could attempt to purchase the additional land.

Mr. Horan said much of the expansion is in the Virginia Power Tower right of way. He said the School Board owns that land.

Ms. Rutledge said is this school is used for many different activities. She said she knows they have Cub Scout meetings and are there other facilities in that area used for similar activities.

Mr. Horan said they are building a new middle school about a quarter of a mile away on Telegraph Road. He said polling could be done from the new middle school, they will have

fields but they will not have lights, and there could be the possibility some of the activities could be done at the new middle school.

Mr. Overbey asked if there was a church that meets in this building at this time.

Mr. Horan said he could not tell the Board at this time.

Mr. Adams said concerns one and two of Mr. McClevey's letter mainly deal with buffers and Stormwater Management. He said the bio-retention in number two has been addressed per the County and State standards.

Ms. Kirkman suggested Mr. Adams go through each of the concerns separately and see if the members have questions about each of them starting with number one.

Mr. Adams said concern number one there will be buffers and landscaping in accordance with County regulations. He said the swell would be adjusted coming out of the bio-retention filters and additional work to the Stormwater Management pond.

Mr. Overbey said the issues have been resolved.

Mr. Beauch said right now that parking area is mud and washing down.

Mr. Adams said yes it is mud but we do have a Stormwater Management pond on site. He said they do have some stormwater problems on the site but they are working with the County to resolve. He said what the County and other localities have done is they want to treat the quality of water at the point source. He said a bio-retention filter is taking that run-off from that parking area of the parking lot and all the run-off is filtered to a certain degree. He said they use parking lot islands, ends of parking lots and it is treated, Stormwater Management ponds or retention basin. He said we have enlarged the Stormwater Management pond.

Ms. Kirkman said according to the letter writer they are getting water flow across their property from the school.

Ms. Adams said he thinks he is addressing the developer's property.

Mr. Overbey said he mentions the loading dock.

Mr. Adams showed on the plans the location of the bio-retention sites near the docks.

Ms. Kirkman asked what property Mr. McClevey owns.

Mr. Adams showed the location of Mr. McClevey's property on the plans.

Ms. Kirkman said when the water disburses where does it disburse too.

Mr. Adams said it disburses to the Stormwater Management Pond.

Ms. Kirkman asked where it goes from there.

Mr. Adams said if you have a ten-year event, we are proposing a structure and if the water rises, it will go into the structure out a pipe and into a channel.

Mr. Horan went over the plans with the Board. He said regarding the water flow from the fields, they have met with Mr. McClevey and he has never mentioned this before.

Mr. Adams said when he met with Mr. McClevey this morning he was more concerned with the Brentsmill run-off.

Mr. Adams explained the details of bio-retention and what is used as a filter including chemical threat and reverse osmosis.

Mr. Ackerman asked if the parking lot would cause more contamination.

Mr. Overbey said it appears it would be less contamination than the current situation.

Mr. Kirkman said the letter writer was concerned with contaminants getting into the pasture.

Mr. Horan and the Board continued to discuss the details of bio-retention and Stormwater Management effecting the school and adjacent property.

Mr. Ackermann asked if building the parking lot would increase the amount of cars.

Mr. Horan said it would not.

Ms. Kirkman asked about the lighting of the parking lot.

Mr. Adams discussed the planned lighting.

Mr. Horan said Mr. McClevey has had issues with lighting for several years from the sports fields and he believes a timer has now been installed so the lights turn off at a certain time.

Ms. Kirkman asked if the applicant would, they be willing to agree that there be no all night lighting.

Mr. Horan said for the soccer field he could not agree. He said the School owns the property but they have an agreement with Parks and Recreation that states their use and they control the lighting.

Ms. Kirkman said, you could alter that agreement.

Mr. Horan said he did not know if it would be in the best interest of the community but he could take it back to the School Board. He said he believes timers have been placed on the lights and the issue of the lights being on all night is not an issue anymore.

Ms. Rutledge said you are saying you think and we deal with facts.

Mr. Beauch asked if there are two sets of issues. He said are there security lights versus the ball field lights.

Mr. Adams said when he talked to Mr. McClevey he was concerned about our lights intruding on his property and I explained to him that at the property line there would be zero emission on the rear of his property.

Mr. Horan said the parking lot lighting would have small lights in the parking lot.

Ms. Kirkman asked if those lights would be on all night.

Mr. Horan said yes they would but they are 15-foot lights and much smaller than the lights, you see typically at any other school. He said the reason being is they are in the Virginia Power easement and those lights are much lower. He said all plans going before the County have to be approved according to the Ordinance and this project has been approved.

Mr. Amador said in Mr. McClevey's letter he is asking that the lighting in the parking lot be used for school events and not security lights. He said are the lights in the parking lot being used only for events or will they stay on all night.

Mr. Horan said they would stay on all night long like all school parking lots.

Ms. Kirkman said her question again is, is the applicant willing not to do that.

Mr. Horan said he had to go back to the School Board.

Ms. Kirkman said you are empowered to speak for the School Board.

Mr. Horan said he is but we have cameras at the schools to keep down vandalism and the lights are part of that security system. He said the cameras really cannot see very good when the lights are not on.

Ms. Rutledge said you are saying this is a County standard.

Mr. Horan said for the School Board it is.

Ms. Rutledge said that includes all the schools in the County.

Mr. Horan said that is correct.

Mr. Overbey said you also said it meets the County Ordinance.

Ms. Rutledge said does the Ordinance mention zero lighting and what does that mean.

Mr. Horan said when you go to the edge of the property and hold up a light meter and it reads zero.

Ms. Rutledge said you mentioned the lights are fifteen feet as opposed to twenty-five feet, so visually, what does this do for the adjacent landowners.

Mr. Horan said it is lower lighting. He said he would rather have the twenty-five foot lights but these lights are required by the Virginia Power easement so they have to use them.

Mr. Overbey said the low impact lighting is dark.

Mr. Horan said they do have security concerns with custodial work being done until 11:00p.m.

Mr. Overbey said he would like to have the dumpster location clarified.

Mr. Horan said they are going back and looking at that location.

Ms. Kirkman asked if they had considered graveling the parking lot.

Mr. Horan said they considered it but there would still be maintenance issues and you do not want a lot of rocks at a school for children to throw.

Ms. Kirkman said you have cleared the entire property of rocks, is that what you are saying.

Mr. Horan said we are trying to be straight foreword and not trying to flippant with you but we do not want to use rocks around children.

Mr. Adams said you could not manage the parking with gravel.

Ms. Rutledge said if you put gravel in and did not put any of the new bio-retention facilities and upgraded Stormwater would the run off be better.

Mr. Horan said you still have run-off but it is not as much and not as fast and there is no bio-retention. He said he did not know if the County would require bio-retention for gravel.

Mr. Ingalls said in the front parking lot closest to Den Rich Road going back to Mr. McClevey's property would you consider doing away with the last two parking spaces in that area to give more buffer in that area. He said that would make that area twenty feet wide like the rest of the area.

Mr. Horan said they would be willing to do that.

Ms. Kirkman asked if there was any one present wanting to speak for or against this application.

Proponents: None

Opponents: None

Ms. Kirkman gave the applicant a final opportunity to speak.

Ms. Kirkman closed the public hearing.

Motion:

Ms. Rutledge made the motion to approve the Special Exception to reduce the open space requirement to 74% with the condition that they relocate their dumpsters and eliminate the two northern parking spaces granting a twenty-foot buffer between the McClevey property.

Mr. Overbey seconded based on upon the plans presented at the meeting and did not believe it was relocation but reconfiguration of how the dumpster sits on the property because of the run-off.

Ms. Rutledge said how would you re-phrase that. She said, Madame Chairman she would like to re-phrase the motion.

Ms. Rutledge re-phased the motion to, we approve the requests granting a 74% open space requirement as per the submitted materials and plans before us this evening with two conditions, the dumpster area be reconfigured so any run-off will run to the stormwater bio-filter and the northern two parking spaces adjacent to the northern McClevey property be eliminated.

Mr. Ackermann said he would feel better supporting if the School Board did not come back and ask for more land at some point. He said the School Board is increasing Falmouth and there is the possibility that they would want to increase the footprint of the school. He said he would like to see them acquire other properties and not ask for another Special Exceptions.

Ms. Kirkman asked if Mr. Ackermann would like to amend the motion to make a fourth condition.

Mr. Ackerman said no.

Ms. Rutledge said she made the motion because the case meets the requirements of a Special Exception, in 1990, they had reached their maximum capacity, and it solves many community problems. She said it would give organized drop off and pick-up for children; run-off will be distributed and taken care of.

Mr. Overbey said he seconded the motion for the same reasons and feels the applicant has done an admiral job of meeting all the requirements and concerns.

Mr. Beauch said he is going to support the motion. He said he has been to the school to vote and it is a great place to go to vote but the parking is terrible. He said they are giving Mr. McClevey what he is asking for.

Ms. Kirkman said her concern was the lighting issue has not been addressed and the letter writer ask not only the other lighting be turned off but also the lighting in the parking lot not be on from dusk to dawn. She said she wants to make sure the applicant is not willing to agree, is that correct.

Mr. Horan said no and if you make it a condition, we would have to take it back to the School Board because we have to have lights on in our school parking lots for security.

Mr. Overbey said he feels they have addressed the lighting in the plans.

Ms. Rutledge said the lighting is in accordance with County Code, safety and security for our children, workers, people in the community and they have assured us the lighting is lower and less evasive. She said Mr. McClevey's issue with the soccer fields needs to be addressed by Parks and Recreation.

Mr. Ingalls said he is going to support the motion because it will be in the public welfare and safety taking cars off the road. He said he was a little concerned about the lighting but Mr. McClevey's his house is not near the area. He said it meets the requirements of the Special Exception and he supports it.

Ms. Kirkman said there are many merits to the application but would feel much better supporting the application if the applicant could come to us with the adjacent neighbors and agreement with the plan. She said we do not know that an agreement has been reached and one of the criteria we have to consider is the use not change the character and establish a pattern of development in the community and clearly, we have an adjacent property owner saying it will do exactly that.

Ms. Rutledge said she thinks the applicant has addressed each of the issues more than adequately and the applicant knew they could not be here this evening and met with the McClevey's this morning and they have said on the record they will work with him.

Vote:

Motion to approve 6-1

Mr. Ingalls – yes

Ms. Rutledge – yes

Ms. Kirkman – no

Mr. Amador – yes

Mr. Ackermann – yes

Mr. Overbey - yes

Mr. Beauch -yes

UNFINISHED BUSINESS

None

REPORT BY DEPUTY ZONING ADMINISTRATOR

Ms. Hudson said the Annual report was sent to County Administrator Steve Crosby to distribute to the Board of Supervisors. She said Zoning determinations that have been made this month are in your packet with an additional one in your handouts this evening along with the proposed Ordinance going before the Planning Commission. She said letters have gone out to 2006 applications that have been postponed asking for determination. She said she would like to talk to the Board about a possible workshop concerning Chesapeake Bay regulations and Ordinance. She said Steve Hubble is more than happy to come and give a presentation. She said you might want to put off the floodplain Ordinance until after it has been through the Planning Commission and back to the Board of Supervisors for determination. She suggested a workshop could be

done starting at 5:30p.m. before a regular scheduled meeting and Zoning would provide food for the members.

Ms. Kirkman said she would like to have CBLAD in addition to Mr. Hubble.

Ms. Rutledge asked if the workshop would have to be advertised.

Ms. Hudson said, yes.

Ms. Kirkman said she met with Ms. Hudson this week regarding when applicants indefinitely postpone and it goes on and on. She said there are two issues there are cases that are postponed after the hearing before a vote and cases that keep being postponed and never getting to a Public Hearing.

Ms. Kirkman said she would move this over to New Business so the Board can discuss.

Mr. Beauch said he was a little unclear about the workshop. He said is the County going to change the Ordinance to the extent that we will not be dealing with flood Variances.

Ms. Kirkman said right now we approve Special Exceptions and this will take it away from the Board of Zoning Appeals and put it to the Planning Commission and Board of Supervisors under a Conditional Use process.

Ms. Hudson said the BZA would be still hearing Variances. She said it was suggested at last months meeting to understand the floodway Ordinance better the Board would like to have a presentation on it.

Ms. Kirkman asked if there were any more questions for Ms. Hudson.

Ms. Hudson said she needed direction on the workshop.

Ms. Kirkman said until the Board of Supervisors decides on the floodway district Ordinance they should hold off on that. She said they still would like to have CBLAD to do a presentation.

Ms. Rutledge said she would like to do it but they would not be available for April.

Mr. Beauch asked if a vote or head count was needed on how many could attend a workshop.

Motion:

Mr. Overbey made the motion that the Board of Zoning Appeals has a workshop on the Chesapeake Bay resources from staff and time to be coordinated with staff's availability.

Mr. Beauch seconded the motion.

Vote:

Motion to approve 7-0

Mr. Ingalls – yes
Ms. Rutledge – yes
Ms. Kirkman – yes
Mr. Amador – yes
Mr. Overbey – yes
Mr. Beauch - yes
Mr. Ackermann - yes

ADOPTION OF MINUTES

February 27, 2007

Ms. Rutledge said she had a couple edits that she would give to Ms. Doherty.

Ms. Kirkman said she was going to abstain from the vote because she has not had a chance to review the minutes.

Motion:

Mr. Ackermann made the motion to approve with the edits.

Mr. Amador seconded.

Vote:

Motion to approve 4-1 abstained

Mr. Ingalls – yes
Ms. Rutledge – yes
Ms. Kirkman – abstained
Mr. Amador – yes
Mr. Ackermann - yes

OTHER BUSINESS

Ms. Kirkman said as we were discussing earlier we have the issue of cases that never go to public hearing and cases that go to public hearing but are deferred. She said some of these cases

are open for a very long time. She said there are no provisions in the By-Laws on how to address those and no statutory guidelines.

Mr. Overbey said could we find out what other Boards do.

Ms. Hudson said staff could do some research.

Mr. Overbey said a time limit should be put on it.

Ms. Kirkman asked if there are any more questions.

Mr. Ackermann said he just went to his Board of Zoning Appeals training and they said you do not need a majority of the Board to approve a Special Exception, it just takes the majority of members present and that is not what our By-Laws say.

Ms. Hudson asked if they are changing State Code.

Mr. Ackerman said he did not know it was a statement made in training.

Mr. Overbey asked if Mr. Ackermann could ask when he goes back to his next training.

Mr. Ackermann said he would be happy to but would ask staff to check it.

Ms. Hudson said staff would be glad to check in to it.

Ms. Kirkman said there is a problem with next months meeting. She said the Board of Supervisors has scheduled a meeting in the Board Chambers the same night as our meeting. She said we have three applications coming before us next month and this room not quite as ready for that and would like to propose that we find an alternate meeting time so we can use the Board Chambers.

Ms. Rutledge said we have had more cases in smaller confined areas than this room.

Ms. Kirkman said yesterday we were not sure where we would be meeting tonight because the Board of Supervisors had not decided when they would meet.

Ms. Rutledge said when we used this room before and sat the Board at the end of the room it opened up the whole room; we had a podium and plenty of room for the Public Hearing. She said it is on the website that we meet on the fourth Tuesday. She said she thought it was important to stay with the same schedule unless it is something drastic.

Ms. Kirkman said her preference as the Chair is that we meet in the Board Chambers and according to the By-Laws; I can call meetings on dates. She said she would like to do it coordinating with you all so as many people as possible can be there. She said what she is saying is we are going to schedule another meeting to hear the three cases; we are going to do it at a time that we can do it in the Board Chambers.

Ms. Rutledge said she objects.

Ms. Kirkman said you can object but our By-Laws do give me the authority.

Ms. Rutledge said that is for special meetings not for regular meetings.

Mr. Amador said we had this discussion when we discussed being on TV and we decided that when the Board Chambers was open we would meet there and if it was not open we would meet here and everybody was fine with that.

Ms. Kirkman said she suspects that we will continue to run in to this problem.

Ms. Hudson said this is Budget time and normally that is the only time of year we have to change rooms.

Mr. Amador said there are a lot of scheduling issues and we all volunteer to be here and for me personally to make it from Washington for all these meetings. He said he scheduled a trip based on the current schedule and if this room is open, he did not see the issue.

Ms. Kirkman said her concern is not about the TV piece it is really about accommodating the people coming to the hearings.

Mr. Beauch said you have to imagine this room in a different configuration.

Ms. Kirkman said the Board had convinced her with a different room configuration it would be better. She said if this continues with the Board of Supervisors adding meetings on the nights the BZA meets than she thinks the BZA needs to revisit the schedule.

Mr. Overbey made the motion to adjourn.

Mr. Amador seconded.

Vote:

Motion to approve 7-0

Mr. Ingalls – yes
Ms. Rutledge – yes
Ms. Kirkman – yes
Mr. Amador – yes
Mr. Beauch – yes
Mr. Overbey - yes

Mr. Ackermann - yes

ADJOURNMENT

9:00 p.m.

WLD

Approved: _____ Date: _____
Rachel T. Hudson, Acting Zoning Administrator